E. I. Dupont de Nemours & Company *and* Ampthill Rayon Workers, Inc. Case 5–CA–19480

August 27, 1991

DECISION AND ORDER

BY MEMBERS CRACRAFT, DEVANEY, AND RAUDABAUGH

On February 27, 1991, Administrative Law Judge Frank H. Itkin issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed cross-exceptions and a brief in reply to the Respondent's brief and in support of his cross-exceptions. The Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions[1] as modified and to adopt the judge's recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, E. I. Dupont de Nemours & Company, Ampthill, Virginia, its officers, agents, successors, and assigns, shall take the action set forth in the recommended Order.

[1] In adopting the judge's conclusion that the Respondent violated Sec. 8(a)(5) and (1) by unilaterally implementing its site service operator proposal, we emphasize the Respondent's course of fragmented bargaining. The Respondent insisted throughout the course of negotiations that its site service operator and technical assistant proposals were not part of the negotiations for the collective-bargaining agreement. It is also insisted that these proposals be separate from each other. It is well settled that the statutory purpose of requiring good-faith bargaining would be frustrated if parties were permitted, or indeed required, to engage in piecemeal bargaining. See *Sacramento Union*, 291 NLRB 552, 556 fn. 17 (1988), and cases cited there. What we find unlawful in the Respondent's conduct was its adamant insistence throughout the entire course of negotiations that its site service operator and technical assistant proposals were not part of the overall contract negotiations and, therefore, had to be bargained about totally separately not only from each other but from all the other collective-bargaining agreement proposals. We find this evinced fragmented bargaining in contravention of the Respondent's duty to bargain in good faith.

Angela S. Anderson, Esq., for the General Counsel.
Alan G. Burton and *Ernest W. Bolton, Esqs.*, for the Respondent Employer.
Parker E. Cherry, Esq., for the Charging Party Union.

DECISION

FRANK H. ITKIN, Administrative Law Judge. The Charging Party Union filed an unfair labor practice charge in the above cage on March 3 and a complaint issued on May 23, 1988. An amended consolidated complaint issued in the above and related cases on December 29, 1988. Later, on March 14, 1990, an order was entered severing and withdrawing the related cases and portions of the allegations in the remaining complaint. In short, the General Counsel alleges in the remaining allegations of the instant case that Respondent Employer violated Section 8(a)(5) and (1) of the National Labor Relations Act by unilaterally implementing on or about January 13, 1988, its proposal to hire full-service employees in the position of site service operators without having reached a valid impasse in bargaining with the Union. Respondent Employer denies violating the Act as alleged. Hearings were held on the issues thus raised in Richmond, Virginia, on March 20 and 21 and July 12, 1990.[1]

On the entire record, including my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT[2]

Respondent Employer is an employer engaged in commerce and the Charging Party Union is a labor organization as alleged. The Union is the exclusive bargaining representative for the following appropriate units of Respondent's employees:

> All production, maintenance, service and plant technical hourly wage roll employees employed by Respondent at its Spruance Plant of the textile fibers department, located in Ampthill, Virginia, but excluding all employees classified as instructors, instructresses, security officers, limited service employees, employees when working as relief supervisors and supervisors-in-training, and supervisors.
>
> All non-exempt monthly salary roll clerical, technical and office employees employed by Respondent at its Spruance Plant of the textile fibers department, located in Ampthill, Virginia, but excluding all hourly wage roll production and maintenance employees, nurses, security officers, executive, plant, employment and planning secretaries; salary, roll, employment personnel, and contract administration clerks; systems technicians, receptionist/telephone operators, employees on the no-service roll, student operators, student engineers, co-op students; and all supervisors.

Recognition of the Union as exclusive bargaining representative for the above production and maintenance and clerical,

[1] Counsel for the General Counsel moved to amend the remaining allegations of the instant complaint at the close of the hearings (Tr. 321 to 326). Counsel for the General Counsel, by this amendment, would additionally allege Respondent Employer's conduct to be violative of Sec. 8(d) of the Act because the Employer assertedly also did not give appropriate notice to the Federal Mediation and Conciliation Service of the existence of a dispute. The proposed amendment was allowed over objection. No additional evidence was presented in support of or in opposition to this amendment.

[2] The evidence presented was essentially uncontroverted and undisputed. It primarily consisted of documents and the testimony of F. Hampton Davis, Jackson R. Warren, and David Huff for the Employer, and Linwood Thomas, William E. Pearce, and James Shaffer for the Union and the General Counsel. The testimony, insofar as material or pertinent to a resolution of the issues, was not in conflict. Nevertheless, I note that the testimony of the former witnesses (Davis, Warren, and Huff) was more detailed, complete and precise than the testimony of the latter witnesses (Thomas, Pearce, and Shaffer). To the extent a conflict in factual recitations—as distinguished from impressions or conclusions or assertions by these witnesses—may be deemed material or pertinent here, I would credit the testimony of the former witnesses. The documentary evidence was for the most part presented in joint exhibits and was similarly undisputed.

technical and office employee units at the Spruance Plant has been embodied in separate successive collective-bargaining agreements for many years, the most recent of which agreements were effective until December 13, 1987. (See Jt. Exh. 45.)[3]

The most recent collective-bargaining agreement pertaining to the production and maintenance unit (Jt. Exh. 45), which has been extended by the parties on a day-to-day basis since its termination, provided, inter alia, in article IV under the subject wages:

> A copy of hourly wage rates and job classifications for all hourly roll employees covered by this Agreement and any subsequent revision of these rates and job classifications shall be furnished to the Union by the Company. A list of job write-ups from which such job classifications were made shall be made available to the Union officers and directors at their request. When new jobs are to be established, the Union shall be provided information in writing with respect to major duties and rates of pay.
>
> . . . .
>
> Either party to this Agreement shall have the right at any time to reopen the subject of hourly wage rates for negotiation, and the Company agrees to make no reduction in established job rates without prior negotiation with the Union.

The agreement also provided in article VIII under the subject seniority:

> In cases where seniority is found to be the determining factor [pertaining to termination, transfer, promotion, demotion or reemployment], it shall be applied in accordance with the remaining sections of this article and the Rules of Job Progression. A copy of such Rules of Job Progression shall shall be furnished to the Union. Meetings to negotiate changes in the Rules of Job Progression shall be held not later than seven calendar days following receipt of notice by either party.

The separately printed rules of job progression (Jt. Exh. 4), referred to above in the collective-bargaining agreement, are concededly regarded by the Employer as ''part of'' the collective-bargaining agreement. These rules are primarily directed at unit employee movement. (See R. Br. 7–9.) Counsel for Respondent acknowledges that ''prior to implementation'' of its site service proposal, which is the subject of the alleged unlawful unilateral action here, ''each job in a plant and/or area was distinguished by a separate job code'' and ''bids may only be made to another job code''; however, ''upon implementation'' the new ''site service operator was given a single job code so that area assignment was at Management's discretion'' and ''an individual could not through the job transfer request system move laterally to another area . . . .''

The Employer, on the other hand, has assertedly ''never viewed actual wage rates as being contractual'' or ''tied to the contract'' because ''no specific wage information has been contained in the contracts'' (R. Br. 5). There are insofar as pertinent here five groups of unit employees. Rate of pay is determined in part by the employee's group level. (See Jt. Exh. 5(a).) Counsel for Respondent acknowledges (Br. 7):

> Prior to implementation of the site service [proposal in issue here], each group had two pay levels; a hire . . . or a start rate . . . and a top rate which was automatically obtained after eight weeks. The only post-implementation change is at group one where two training steps have been added and the time to reach the top has been enlarged to one year. Additionally, advancement is not automatic; supervisory approval is [now] required . . . .

Counsel for Respondent Employer acknowledges that its site service proposal is a mandatory subject of collective bargaining. And, as will be shown below, the Employer in fact negotiated with the Union over this site service proposal at the same sessions where collective-bargaining agreement proposals were also being discussed. The parties concededly have not reached agreement or impasse in their negotiations for a new collective-bargaining agreement. Respondent argues, inter alia, as discussed infra, that it fulfilled its bargaining obligation and properly implemented its site service proposal as modified upon impasse. On the other hand, counsel for the General Counsel principally contends that no valid impasse was reached with respect to this site service proposal because Respondent Employer, during the critical ensuing bargaining sequence, adamantly refused to discuss or consider a proposed ''horse trade'' or compromise between this site service proposal and another admittedly mandatory subject of collective bargaining then on the negotiating table pertaining to technical assistants (see Tr. 298, 276–277, 42).

The evidence pertaining to the Employer's advancement of its site service proposal, the positions of the parties and the implementation of the proposal as modified is summarized below.

A. *The Employer's October 1, 1987 Meeting with the Union's Executive Committee and its First Advancement of its Site Service Operator Proposal*

The Union's executive committee is composed of board members. It meets every 2 weeks with the Employer to discuss, inter alia, ''improvements of working conditions, increase of wages and the General betterment of the conditions of employment.'' The Union's contract committee is composed of three executive board members and two elected at large members. It meets with the Employer ''to prepare and negotiate a contract.'' (See Jt. Exh. 49.) Union Treasurer Linwood Thomas explained that ''it is an internal function'' whereby the Union determines which committee will meet with management.

The Employer, since about early July 1987, had under study a proposal pertaining to its site service operators. At its October 1, 1987 ''regular meeting'' with the Union's executive committee, the Employer ''said it wanted to propose

[3] The Spruance Plant's work force during the pertinent time period consisted of some 3241 employees which included 48 limited service employees and 3193 full service employees. The limited service employees (part-time or temporary employees) are not represented by the Union. There are, with respect to the full service employees (full-time employees), 2064 production and maintenance unit employees and 294 clerical, technical and office unit employees. There were separate collective-bargaining agreements for both units. Although joint unit bargaining occurred, we are, as counsel for Respondent notes in his brief (pp. 21–22), principally concerned with the production and maintenance unit.

a lower paid full service assignment.'' The Union ''interrupted, saying it sees this as a contract issue and would be wasting time to discuss [it] at this meeting; this needs to be discussed with the contract committee.'' ''Management said if it wanted to hire it would go ahead and hire.'' The Union explained that ''it sounds like something new and will be a contract item.'' The Union agreed to get back to management ''on the timing'' of a contract committee meeting. Management complained that it ''is receiving more and more referrals to the contract committee.'' (See Jt. Exhs. 1 and 2.) As the Employer's representative and chief contract negotiator F. Hampton Davis acknowledged, ''well I agreed to do that since they can choose whomever they want to represent them.''[4]

B. *The Employer Gives Notice on October 12 of its Intention to Terminate its Current Collective-Bargaining Agreements and Holds its First Meeting with the Union's Contract Committees on October 13; the Employer Presents the Union with its Various Proposals Including its Site Service Proposal*

The Employer, by letters dated October 12, notified the Union and the Federal Mediation and Conciliation Service of its ''desire to terminate the current'' collective-bargaining agreements with the Union. (See Jt. Exhs. 3, 3A, and 10 p. 2.) The Employer thereafter met on October 13 with the Union contract committees.

Company Chief Negotiator Davis testified:

> The first item was contract, it was a marked up labor agreement on some proposals we had. The second item was flexible spending accounts, which was a new employee benefit . . . and would be included in the labor agreement if the Union would agree to that. And then there were two issues around a technical assistant operator combination in the research lab [see fn. 4, supra] and the hiring of full service employees that Management did not believe were contract issues.

Davis admitted that both the Employer's site service operator proposal and its technical assistant proposal are mandatory subjects of collective bargaining. (See Tr. 298, 276–277, and 42.) Davis was asked, with respect to his asserted delineation between so-called ''contract issues'' and ''non-contract issues,'' ''what difference would it make . . . you would still have to bargain about these same subject matters . . . ?'' Davis responded: ''Yes sir, but . . . if you have a contract bar you cannot implement it . . . impasse it and implement it . . . .'' (Tr. 277.)

Management presented what it deemed to be its ''contract proposals.'' Management also attached a proposal pertaining to its rules of job progression ''to exclude as new jobs new shift(s) established in an existing job code until incumbents have an opportunity to utilize their seniority.'' Discussion ensued. Then management said that it had ''no further contract proposals.'' The above proposals do not pertain to the site service operator or technical assistant proposals.

Management, although continuing to insist that its site service proposal is not a ''contractual issue,'' and the Union, continuing to insist that such proposal is ''contractual,'' then discussed the Employer's proposal. (See Jt. Exhs. 9 and 10.) Management distributed its proposal to the Union. (See Jt. Exhs. 6 and 7.) Management made clear that it will ''begin taking applications on October 14'' and ''hiring would occur as rapidly as bargaining can be completed, interviews held and applicants informed, probably early 1988.'' This proposal provided, inter alia, that a new unit site service operator position would be placed in the existing group one classification; the existing group one rate and progression time would be significantly changed; applicants would now undergo a new intensive screening and testing process; once hired progression would not be automatic since supervisory approval was required; a single job code was created for these site service operators and thus they could no longer voluntarily place a bid to move laterally; work schedules of these operators would be subject to change based on business needs; the tasks to be performed by these operators now placed in group one would come from both nonunit limited service employees' and unit employees' group three, four, and five jobs.

Management repeatedly insisted that this proposal is not ''contractual''; ''it is not proposing any changes to the contract with this proposal''; and this proposal ''does not change the Rules of Job Progression structure.'' The Union insisted that this proposal is ''contractual'' and in fact it affects the rules of job progression. Management claimed that ''current pay scale for group three full service employees is too high for some of the lower skilled group three tasks in the plant.'' The Union ''said it believes Management is trying to displace all full service employees with low paying site service operators'' and ''reduc[e] the pay structure.'' During the discussion over this proposal,

> The Union said Management is giving the Union conflicting statements. Management has said in the technical assistant proposal it is willing to allow wage employees to become technical assistants without taking or passing the technical assistant test. Yet in this proposal Management will require limited service employees to take and pass the test to become site service operators. The Union asked why the conflict. Management said the technical assistant proposal was not being bargained at this meeting at the Union's request. Therefore, Management would not respond to the Union's comment.

The parties agreed to meet on October 16.

C. *The Second Meeting of the Parties on October 16*

The parties held their second contract committee meeting on October 16. The parties discussed the Employer's technical assistant proposal. As Joint Exhibit 11 shows, the ''pro-

[4] Davis noted that earlier, about July 1987, he had also discussed with the Union another Employer proposal pertaining to technical assistants. The Employer proposed, inter alia, to ''take the research lab group five operators and move them into a technical assistant assignment and eliminate the group five assignment . . . we would only have one person doing what two people had previously done . . . it would go from the production and maintenance unit to the clerical, technical and office unit . . . .'' Davis wanted to take this proposal to the union executive committee as well and was informed by the Union ''that we ought to take it to the contract committee.'' Davis here too said ''I don't agree, but fine, I'll take it to the contract committee.'' The technical assistant proposal was later presented and discussed at the ensuing contract negotiations and in fact was the proposal which the Union wanted to ''horse trade'' or compromise with the site service proposal in an attempt to reach a compromise or agreement.

posal is to have a combined operator technical assistant rather than separate operators and technical assistants'' and management proposed ''to move'' 24 research lab operators into ''the non-exempt roll as technical assistants.'' The ''Union said it does not agree with the way Management wants to move people and it rejects the Management proposal'' and the ''Union will come back to Management with the Union's answer to Management's proposal.'' Other bargaining subjects were then discussed. On the issue of the proposed site service operator, the Union announced that it is ''not ready to respond.'' The parties agreed to meet on October 23.

D. *The Third Meeting of the Parties on October 23*

The Union announced at this meeting, with respect to the Employer's site service proposal, that ''it is working on its proposal and should have it at the next meeting . . . .'' Management claimed ''urgency of proceeding with the job of interviewing and hiring employees . . . .'' The Union replied that Management ''has not hired a full service employee since 1982; . . . this proposal is only from October 13''; and ''Management should not be so urgent and give the Union time to look at the proposal.'' The parties also discussed the Employer's technical assistant proposal; Blue Cross-Blue Shield; the flexible spending account plan proposal; the Union's proposed wage increases; and other bargaining subjects including so-called ''contract proposals.'' The parties agreed to meet on October 28. (See Jt. Exh. 13.)

E. *The Fourth Meeting of the Parties on October 28; the Union makes a Counterproposal on the Site Service Operator Proposal*

The parties discussed, inter alia, the Union's wage increase request; the Employer's site service proposal Blue-Cross Blue-Shield; and the Employer's ''contract proposals.'' With respect to the site service proposal, the Union emphasized that ''its main concern is to protect current full service employees on this location''—''when dealing with a new job rate its concern is about full service employee pay and seniority rates under the contract.'' The Union then advanced a five-page counterproposal on this issue. (See Jt. Exhs. 16, 17, and 18.)

The Union's counterproposal proposed to eliminate the 180-day and 1-year progression steps and new rates; eliminate the supervisory recommendation requirement; permit an employee to advance to the current top group one rate after 90 days; increase the period a laid-off incumbent could be recalled and receive the group three rate from 2 to 3 years; provide that no limited service employee or site service operator be brought back following a reduction in force until all incumbent full service employees are returned; retain the current group one progression; retain existing area work schedules; provide that promoted and later demoted site service operators retain their higher rate; provide for pay during the Employer's proposed 3- to 5-day orientation; and delete a number of the tasks or duties which management had proposed to transfer to the newly created group one site service operator. Management said that ''these would be considered and discussed later.'' The Union said that ''they believed it was unrealistic to expect them to accept a top rate $7.25 against the other current rates.'' The ''current top group one pay rate is $9.67 after 90 days rather than management's proposal of $7.25 to be achieved over a 12-month period.'' (See Jt. Exh. 18.)[5] The parties agreed to meet on November 3.

F. *The Fifth Meeting of the Parties on November 3*

Management at this session made and discussed its responsive wage proposal to the Union. Management then turned to its site service operator proposal and the Union's counterproposal. Management stated that ''it does not agree to pay the top group one rate or the two step structure proposed by the Union.'' (See Jt. Exh. 19.) Management also said that it ''was unwilling to increase recall rights to three years'' as requested by the Union. Management stated that it ''agrees with the Union's proposed statement'' pertaining to priority recall of full service employees following a layoff. Management then rejected the Union's attempt to delete the Employer's proposed clauses pertaining to ''pay increases at 90 and 180 days with top pay after one year for new hires''; ''all increases approved'' by management; and ''all site service operator group one schedules are subject to change based on business needs . . . .'' Management insisted that its proposed ''clauses are necessary.'' Management similarly rejected the other counterproposals advanced by the Union (see Jt. Exhs. 17 and 18) except, as noted (Jt. Exh. 19), management agreed to a union-proposed language change providing for ''125 assignments currently filled with limited service employees.'' Then,

> The Union said there has been no change from Management's original position of 10/13/87 concerning this proposal. The Union said that management has rejected all of the Union's proposals concerning hiring of site service operators and the Union does not feel that management has properly bargained this proposal . . . .

The parties turned to what management regarded as ''contract proposals'' and the following exchange took place (Jt. Exh 19):

> The Union said it wanted Management to understand and for it to be recorded in these minutes that this is the fifth contract committee bargaining session with Management and that the issues discussed today are contractual items. Management said hiring of site service operators does not require changing anything in the contract, The Union . . . disagree[d] . . . .

The parties then discussed Blue Cross-Blue Shield premiums; and again turned to the technical assistant/operator combination proposal. On the latter issue, management insisted that ''to retain [the] two separate employee groups'' is ''unacceptable.'' Management claimed that ''absent additional new input from the Union it plans to decide the appropriate course of action . . . .'' The Union responded that it ''expects Management to maintain the production and main-

[5] The Union also apprised the Employer that it ''rejects Management's offer'' with respect to the technical assistant/operator combination. And, following the discussion pertaining to the Union's requested wage increase, the ''Union said just as Management has said the Union's seven percent wage request is unrealistic, the Union also believes that it is unrealistic to hire full service employees with a top rate of $7.25 an hour. . . . It is unrealistic for Management to believe the Union could agree on a $7.25 rate for site service operators who would be doing group three, group four and group five work.''

tenance jobs and the clerical, technical and office jobs and not to combine those people without proper bargaining . . . .''

The next meeting was scheduled for November 6 ''to respond to Management's wage and salary offer'' and the parties agreed that ''they will schedule the next meeting to continue bargaining on the other issues at a later time.''

G. *The Sixth Meeting of the Parties on November 6*

The parties discussed the Employer's wage offer at this session. Company Chief Negotiator Davis testified that this meeting was ''devoted to the wage offer'' and the Union ''accepted Management's wage offer at this meeting.'' (See Jt. Exhs. 22 and 23, p. 3.) A new hire rate and top rate had been agreed upon for, inter alia, group one employees; however, as the rate sheet shows, the parties understood that this subject was ''currently being negotiated'' under the site service operator proposal still on the bargaining table. As Union Chief Negotiator Pearce explained, the parties agreed to implement the rates; there were at the time no site operators; and ''there was no mention of site service operators as far as that rate because we were still . . . negotiating the rate and everything.'' It was agreed that the next meeting would be on November 11.

H. *The Seventh, Eighth, and Ninth Meetings of the Parties on November 11 and 19 and December 8*

The seventh meeting of the parties was on November 11. The parties discussed, inter alia, the wage increase, capping of nonexempt employees, ''contract proposals,'' and the Employer's site service operator proposal. As Joint Exhibit 24 shows with respect to the site service proposal,

> Management asked the Union its position . . . . The Union said Management made a proposal; the Union made a counterproposal; Management rejected the Union's counterproposal; therefore, Management's proposal has not changed. Management asked if the Union had any additional input on its proposal. The Union said not at this time. . . . The Union said Management is not bargaining. . . . Management asked if the Union will give Management any additional input . . . . The Union said again not at this time. Management asked when it could expect to get any additional information as input from the Union on this proposal. The Union said ''maybe never.'' The Union said again that Management made a proposal; the Union counterproposed; and Management has not changed from its original proposal. The Union also said that Management has not considered the Union's input. Management disagreed . . . .

Company Chief Negotiator Davis nevertheless ''felt [that] we had not reached the point where we wouldn't get some more input on this point.''

At the eighth meeting of the parties on November 19, as Joint Exhibit 26 shows,

> Management said it had made other proposals to the Union such as the contract proposal, hiring of site service operators as full service employees and the research technical assistant . . . and asked the Union if it wanted to respond to any of those items today. The Union said that it was not ready to respond.

The parties discussed, inter alia, the wage and salary increase.

At the ninth meeting of the parties on December 8, as Joint Exhibits 27 and 28 show, the parties discussed hospitalization coverage, pension and retirement, the site service operator proposal, the technical assistant proposal, ''contract proposals,'' and the anticipated termination of the contract on December 13. The Employer restated its position on the site service proposal. The Union accused the Employer of not bargaining in good faith. The Union had ''no additional input'' and management ''stated that bargaining on this subject needed to be resolved promptly because hiring needed to proceed.'' As for the technical assistant proposal:

> The Union said it has gone out and talked with operators and technical assistants in research. Only one operator wanted to become a technical assistant, the other operators wanted to remain operators, The [sic] technical assistants did not like operators becoming technical assistants without being tested, nor did they want their jobs combined with the operators. The Union said Management has not shown to the Union where the inefficiency lies in the research lab. The Union said if Management would make supervision do its job Management would not have the ineffectiveness and inefficiency problems in research . . . .

The Union later requested a meeting on December 11.

I. *The 10th Meeting of the Parties on December 11; the Union Makes a Modified Counterproposal*

The 10th meeting of the parties was on December 11. The parties discussed the site service operator proposal, the technical assistant proposal, amendments to the disability wage plan and nonexempt paychecks. The Union made another, or modified, counterproposal pertaining to site service operators. (See Jt. Exhs. 29, 30, and 31.)

The Union proposed, inter alia, with respect to site service operators to drop the top group one rate from $9.67 to $8.61 per hour. The Union explained that ''it took the difference between Management's original proposal and the Union's original proposal in order to compromise it . . . .'' The Union proposed that no limited service employees or site service employees would be recalled in case of layoff ''until all full service employees are given the opportunity to return to work regardless of business needs.'' The Union explained that ''current employees should be given the opportunity to return . . . prior to any limited service employee or temporary people even if Management believes the duration is temporary . . . .'' The Union proposed that ''group one will progress using [the] progression system already bargained''; ''this relates to pay progression discussed above''; and to ''follow existing schedule[s] in [an] area.'' The Union proposed:

> Roll backs and layoffs be by plant seniority. People hired into the site service operator job and promote[d] then voluntarily regresse[d] to the site service operator job will be be paid the site service operator rate of pay. If forced to go back to site service operator they will

retain the rate of pay they were making at the time of the cut back.[6]

The Union further proposed that ''area Union directors will be covered prior to movement of site service operators from area of excess to area of need.'' The Union explained that ''with this proposal it wants to be certain that area directors are informed that employees are going to be moved'' ''consistent with contract provisions . . . .'' The Employer agreed. The Union proposed that ''site service operators would receive shift differential pay.'' Management ''said that site service operators will be paid under the labor agreement which provides for shift differential . . . .'' The Union proposed that site service operators ''would receive wage increases under the Evergreen clause [art. IV sec. 2 of the collective-bargaining agreement] as it exists for current full service employees.'' Management ''agreed.'' The Union proposed that ''all benefits [for site service operators] would be . . . for current full service employees.'' Management ''agreed.'' The Union proposed a ''hire in standard'' with ''orientation with pay.'' The Union proposed that certain tasks or duties which management wanted removed from groups three and four and which the Union previously had opposed could become site service operator's tasks or duties and that ''all group five jobs that Management had proposed as site service operator tasks remain with the group five incumbents.'' The Union also proposed to reserve the right ''to modify its proposals.''

The parties then discussed the Employer's technical assistant proposal. The Union requested ''information'' and ''clarification.'' The Union explained that ''it wants to be able to help get the flexibility Management needs with less hassle and also not to do away with the testing and plant seniority.'' The Union noted that ''if Management is receptive the Union could caucus and develop a proposal for Management . . . the Union's intent is that it does not want to upset the whole site on managing the research technical assistant problems.'' Management said that ''it would like to hear what the Union has to say'' and would ''take a serious look at any proposal given by the Union.''

Deadlines, impasse, and implementation were discussed. As Joint Exhibit 29 shows:

> Management said concerning contract proposals there [is] no specific urgency on any of the items proposed by Management. . . . [C]oncerning the research technical assistant . . . [it] needs to be resolved by early January . . . because there is a need of about two weeks . . . to post the job openings and to allow people to move . . . . [C]oncerning the hiring of full service employees . . . Management wants to begin interviewing applicants in early January. However, management realizes that in order to do that it needs to be able to tell applicants what management will be paying for the full service employees jobs. . . . Management said December 13 [the contract expiration date] is not a deadline for Management to impasse and implement its proposal to hire full service employees . . . .

[6] As Jt. Exh. 29 shows, a discussion ensued and the Union withdrew its proposal in this respect.

And, as Joint Exhibit 31 shows, management ''agreed to consider'' the Union's modified counterproposal pertaining to site service operators and stated that ''interviews needed to start January 4 so this proposal needed to be resolved this month.'' In addition, management said that ''any proposal'' from the Union pertaining to the technical assistant proposal ''would be seriously considered'' and ''this needed to be revolved by early January . . . .''

J. *The 11th Meeting of the Parties on December 15*

The 11th meeting of the parties was held on December 15. The parties discussed the fact that the contract had terminated on December 13. Management announced that ''it will continue to bargain any changes in pay, wages, hours of work and other conditions of employment,'' and ''continue to honor provisions of the current labor agreements as if they were in force'' ''on a day to day basis.'' (See Jt. Exhs. 32 and 33.) Management then stated its response to the Union's counterproposal of December 11 pertaining to site service operators. Management declined to accept the Union's counterproposal on rates. Management also disagreed with the Union's proposal for a 3-year recall instead of 2 years. Management stated, inter alia, that ''if a person is hired after recall rights expire and was on the roll as a full service employee on 1/1/88 he/she would be paid the rate he/she would have been paid as an incumbent full service employee.'' Management discussed other incumbent protections or effects under its proposal. Management again agreed that no limited service employee or site service operator will be brought back from layoff until all full service employees are given that opportunity ''regardless of business needs''; area Union directors ''will be covered prior to movement of site service operators''; site service operators would receive shift differentials as ''already'' provided in the agreement; site service operators would ''receive wage increases under the Evergreen clause'' of the contract ''as it exists for full service employees''; and ''all benefits would be for current full service employees.'' Management stated that it is ''not willing to agree not to bring in a contractor'' under certain circumstances, with respect to the Union's proposal that ''there will be no contract labor in the plant while current full service employees are on layoff.'' Management denied the Union's requests that ''group one will progress using the progression system already bargained''; to ''follow existing schedules in area''; and the Union's ''hire in standards'' counterproposal.

Joint Exhibit 32 further recites:

> Management said it would start hiring about 65 full service employees and that would get up to some 300 later. There is a high number of group threes and fours. Only eight jobs out of 300 group fives are being impacted. Management said that the Union had previously counterproposed that Management keep group five jobs for group five. Management is not ready to respond to the Union's counterproposal today on this issue.[7]

Joint Exhibit 32 also recites:

> Management said the Union had made a counterproposal that the following tasks that are now group

[7] See the note following the above-quoted entry in Jt. Exh. 32.

> three tasks remain group three tasks for one year . . . . Management is still considering and will respond later. . . . The Union said again it is counterproposing for Management to leave the following tasks as group three for one year . . . . Management said it understands the Union's counterproposal. This is being considered and will respond to the Union later.[8]

Management ''suggested'' that the ''remainder of the issues on this proposal'' ''be resolved in the meeting scheduled for 12/21/87.'' The Union ''said it will give Management its position at the next meeting on 12/21/87.''

The parties next discussed the Employer's technical assistant proposal. ''Management reviewed the need to improve effectiveness through either the combination of jobs or some other creative approach in which the operators and technical assistants could be fully interchangeable to accomplish whatever tasks needed to be done without the incumbent barriers.'' (See Jt. Exh. 33.) And, as Joint Exhibit 32 shows:

> Management [stated that it] is trying to give the Union an opportunity to give input that Management can live with. Management asked the Union when it would be ready to respond. The Union said it would respond on 12/21/87.

K. *The 12th Meeting of the Parties on December 21; the Union Makes Another Counterproposal*

The Union stated at this session that it would respond to both the Employer's proposal to hire site service operators and also to its proposal concerning the technical assistant operators. As Joint Exhibits 34 and 35 show:

> The Union said it is willing to accept Management's hiring of full service employees proposal as well as the research technical assistant/operator proposal with the understanding that Management will fill the technical assistant jobs using the existing job transfer request system [of the Rules of Job Progression]. The Union requested Management to guarantee that excess group five employees would not be rolled back. In return, as a package deal, the Union wants all limited service employees on the location to be made full service employees with the test being waived. The Union said it agrees to hire full service employees with a hire rate for site service operators of $6.25 an hour with the rate going to the group two rate after 90 days. The group two rate is $10.59 an hour. . . . Also, the group five tasks that Management had proposed to be turned over to site service operators will be retained with the group five operators.
>
> The Union said there are now 24 incumbent research operators. The Union requested again that the research group five operators retain their group five rate after management implements the technical assistant/operator proposal. The Union said that those operators in research who did not pass the technical assistant test or did not want to go to technical assistant jobs would remain in the area and retain their group five jobs. If they are moved out . . . they will still retain their group five rate even if excess.
>
> The Union said it wanted to make clear with Management that its proposal . . . included the agreements previously made in the current bargaining sessions. Management acknowledged.

As Chief Union Negotiator Pearce testified, ''We felt that maybe by putting these two proposals together and compromising one for the other, giving some, taking some, that we could resolve both of them.'' Pearce explained:

> We had two proposals that we were working on along with other proposals . . . and we felt the only way we could agree with both was to try to put them together. . . . Our proposal was to tie the two proposals together . . . . [W]e were willing to give Management the group five jobs that they wanted to put into the clerical, technical, office [unit] . . . we were willing to give Management the flexibility to move the people from area to area without using the Rules of Job Progression, the flexibility to change shift schedules without using the Rules of Job Progression, give up some of the group threes, group four and group five jobs or job assignments . . . we even were willing to drop the hiring rate from $6.95 an hour to $6.25 an hour . . . .

Management ''said it understood the Union's proposal and it would respond to the Union later.''

L. *The 13th Meeting of the Parties on December 29; Management Refuses to Consider the Union's Proposed Compromise*

The 13th meeting of the parties was held on December 29. As Joint Exhibit 36 shows:

> Management said in previous meetings it had made a proposal to hire full service employees and a proposal to improve the efficiency of the research lab technical assistant/operator interface. In the last meeting . . . the Union lumped these two proposals together in an attempt to make one contingent upon the other. Management said this is of concern and Management did not bargain that way. Each proposal stands on its own merits.

Management then restated its ''original'' proposal pertaining to site service operators. Management restated the ''issues resolved'' pertaining to this proposal. Management now noted that it is also ''willing to increase recall from two to three years.'' Management restated the subjects upon which the parties disagreed with respect to this proposal. Management said that ''it has responded several times to all of the Union's proposals''; ''some have been reconciled, some have been withdrawn and some remain unreconciled.'' Management said, ''It is willing to discuss any new input but does need to proceed with the interview process . . . .''

As Joint Exhibit 36 further shows:

> The Union asked what about the technical assistants . . . Management said the Union's recognition of the problems and acceptance of the expanded technical assistance job description was encouraging. However,

[8] See the footnote following the above-quoted entry in Jt. Exh. 32.

> Management is not willing to tie hiring full service employees to the research lab technical assistant situation. These are separate issues. . . . The Union said it made its proposal last week and feels that Management has not responded . . . . Management said it is disappointed with the Union wrapping the two items together. It portrays Management as trying to run over the Union. Management said there is a need to go forward and use a hire rate of $6.25. Management said it is not going to horse trade with the Union. The Union said it is it's prerogative to propose to Management as it wishes . . . and Management is refusing to respond to the Union proposal. Management said it will communicate to the plant that it will start interviewing next week.

The parties referred to ''impasse'' and ''implementation.'' ''Management said it has waited as long as it can wait.'' And,

> The Union said it is willing to accept the technical assistants and site service operators if Management is willing to accept some things. It doesn't make sense for Management to implement one of the items. Management said it is not trying to run over the Union. Eleven weeks is a long time to resolve hiring when there is a pressing business need to do so. . . . The Union said it made a proposal . . . and . . . cannot respond until Management responds to the Union's entire proposal.

Chief Union Negotiator Pearce testified in part:

> Management said they did not horse trade, they did not want to deal with the issues together. They only wanted to bargain them separately. They were separate issues. As I said before, we were at the position where the only way we could get anywhere further was to try to resolve both of them together by give and take on both issues. Management was not willing to do that.

Chief Management Negotiator Davis testified in part:

> Our view has been always, and we have said it many times, many times, that if it's justified, it's justified; if it isn't justified, it isn't justified . . . [a]nd we are not going to try to take one item and to beat someone over the head for another one . . . that's our history . . . . I just want to make sure that they understand that we haven't got in the business of saying, okay, if you do this I'll do this and this because it clouds the issues . . . .

Later, Davis asserted: ''I wouldn't have agreed to both of those anyway.''

M. *The 14th and 15th Meeting of the Parties on January 8 and 13; Management Implements its Site Service Proposal as Modified*

As Joint Exhibit 39 states:

> Management gave the [Union] committee [on January 8] a revision of the original proposal of October 13 [pertaining to site service operators]. The revision was issued to show the upgrades resulting from bargaining over the past 12 weeks. . . . The committee said they would consider the latest proposal and hopefully respond at the next meeting.

See also Joint Exhibits 38 and 40.

Thereafter, on January 13, as Joint Exhibit 41 shows:

> The Union stated it does not like Management going to impasse and implementation of the rate. Management has already told applicants who are being interviewed for site service operator jobs what the rates would be. The Union said it does not agree to Management's proposal and rejects Management's proposal to hire full service employees. The Union said it tried to come up with a solution to the proposal but it has been unable to do so and it has no other input . . . .

Management announced that the ''first employees should be on the roll about mid February.''

A job description for ''miscellaneous operator-site services-all products'' was later provided to the Union as required in the contract and a revised rate sheet issued. (See Jt. Exhs. 44 and 45.) The Employer's initial proposal with modifications was implemented.[9]

Discussion

Section 8(a)(5) of the National Labor Relations Act makes it an unfair labor practice for an employer ''to refuse to bargain collectively with the representative of his employees . . . .'' Section 8(d) provides that ''to bargain collectively is the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment . . . .'' In *NLRB v. Insurance Agents' International Union*, 361 U.S. 477, 485, 486 (1960), the Supreme Court recognized that ''[c]ollective bargaining . . . is not simply an occasion for purely formal meetings between management and labor while each maintains an attitude of take it or leave it; it presupposes a desire to reach ultimate agreement, to enter into a collective bargaining contract''; though ''the parties need not contract on any specific terms . . . they are bound to deal with each other with a serious attempt to resolve differences and reach a common ground.'' Similarly, in *NLRB v. Katz*, 369 U.S. 736, 747 (1962), the Supreme Court held that the parties must refrain not only from behavior ''which reflects a cast of mind against reaching agreement,'' but from behavior ''which is in effect a refusal to negotiate or which directly obstructs or inhibits the actual process of discussion.'' In short, as stated by the court of appeals in *NLRB v. General Electric Co.*, 418 F.2d 736, 762 (2d Cir. 1969), cert. denied 397 U.S. 965 (1970),

> [T]he statute clearly contemplates that to the end of encouraging productive bargaining, the parties must make ''a serious attempt to resolve differences and reach a common ground'' . . . an effort inconsistent with ''a predetermined resolve not to budge from an initial position.'' . . . A pattern of conduct by which one party makes it virtually impossible for him to respond to the

[9] Counsel for the General Counsel's motion to correct the record, which is unopposed, is granted.

> other—knowing that he is doing so deliberately—should be condemned by the same rationale that prohibits ''going through the motions'' ''with a predetermined resolve not to budge from an initial position'' . . . [citations omitted].

It has long been settled that an employer violates this statutory duty to bargain in good faith when it makes ''unilateral changes in conditions of employment under negotiation''; for, as the court of appeals explained in *Television Artists AFTRA v. NLRB*, 395 F.2d 622 (D.C. Cir. 1968), an employer is only privileged to unilaterally implement such changes that ''are reasonably comprehended within his preimpasse proposals'' ''after bargaining to an impasse, that is, after good faith negotiations have exhausted the prospects of concluding an agreement''; there must be ''no realistic possibility that continuation of discussion at that time would be fruitful . . . .'' And, as the Board more recently explained in *Sacramento Union*, 291 NLRB 552 (1988), ''Only in this latter context where there has been a complete breakdown in the entire negotiations is the employer free to implement his last, best and final offer.''

It has also long been settled that an employer violates this statutory duty to bargain in good faith where it reduces the flexibility of collective bargaining and narrows the range of possible compromises by rigidly and unreasonably fragmenting negotiations (see *Trumbull Memorial Hospital*, 288 NLRB 1429, 1446–1447 (1988); or where it has ''a fixed determination to implement [its proposal] regardless of the status of its negotiations . . .'' (see *Howard Electrical & Mechanical*, 293 NLRB 472, 476 (1989)).

Applying these settled principles of law to the essentially undisputed and credited evidence of record here, I find and conclude that Respondent Employer violated Section 8(a)(5) and (1) of the Act by unilaterally implementing its proposal pertaining to site service operators before a valid impasse had occurred. Thus, on October 12, 1987, Respondent Employer notified the Union—the exclusive bargaining agent of its production and maintenance and clerical, technical and office employee units—of its intention to terminate its existing collective-bargaining agreements with the Union. The parties thereafter met with the Union's contract committee. At the first contract committee meeting on October 13, as Company Chief Negotiator Davis testified:

> The first item was contract, it was a marked up labor agreement on some proposals we had. The second item was flexible spending accounts, which was a new employee benefit . . . and would be included in the labor agreement if the Union would agree to that. And then there were two issues around a technical assistant operator combination in the research lab and the hiring of full service employees that Management did not believe were contract issues.

Davis admitted that both the Employer's site service operator proposal and its technical assistant proposal are mandatory subjects of collective bargaining. (See Tr. 298, 276–277, and 42.) Davis was asked, with respect to his asserted delineation between so-called ''contract issues'' and ''non-contract issues,'' ''what difference would it make . . . you would still have to bargain about these same subject matters . . .?'' Davis responded: '' Yes sir, but . . . if you have a contract bar you cannot implement it . . . impasse it and implement it . . . .'' (Tr. 277.)

Management continued to insist that its site service operator and technical assistant proposals are not ''contract issues.'' The Union continued to insist that these proposals are ''contract issues.'' The existing production and maintenance collective-bargaining agreement provided, as noted supra, for hourly wage rates, job classifications, seniority, rules of job progression and related employee movement. Management's site service operator proposal sought, inter alia, that a new unit site service operator position would be placed in the existing unit group one job classification; the existing group one wage rate and progression time would be significantly changed; applicants would now undergo a new intensive screening and testing process; once hired progression would not be automatic since supervisory approval was required; a single job code would be created for these site service operators and thus they could no longer voluntarily place a bid to move laterally; work schedules of these operators would be subject to change based on business needs; the tasks to be performed by these operators now placed in group one would come from both nonunit limited service employees' and unit employees' higher paying group three, four and five jobs. And, in addition, management's technical assistant proposal sought, inter alia, to ''take the [unit] research lab group five operators and move them into a technical assistant assignment and eliminate the group five assignment; . . . [the Employer] would only have one person doing what two people had previously done; . . . [it would] improve effectiveness through either the combination of jobs or some other creative approach in which the operators and technical assistants could be fully interchangeable to accomplish whatever tasks needed to be done without the incumbent barriers.''

The Employer reluctantly agreed to discuss both its site service operator and technical assistant proposals at the ensuing contract meetings. Again, as noted, the Employer acknowledged the mandatory bargaining status of both of these proposals and, as demonstrated above, these proposals clearly pertained to subjects which one might reasonably expect to be encompassed in the give and take of such contract negotiations. Significantly, management, commencing at this first contract meeting on October 13, made it clear to the Union, even before any meaningful bargaining on the site service proposal had taken place, that it will ''begin taking applications on October 14'' and ''hiring would occur as rapidly as bargaining can be completed, interviews held and applicants informed, probably early 1988.'' Later, at the third contract meeting on October 23, management similarly claimed ''urgency of proceeding with the job of interviewing and hiring [site service operator] employees . . . .'' The Union replied that management ''has not hired a full service employee since 1982; . . . this proposal is only from October 13''; and ''Management should not be so urgent and give the Union time to look at the proposal.'' Indeed, as the record further shows, management had its site service proposal under study for some 3 months before even bargaining the subject with the Union and also had operated for about 2 years before that with what it ultimately regarded as an unsatisfactory system of using temporary nonunit employees to perform some of the job tasks involved.

The Union made a counterproposal to the Employer's site service operator proposal at the fourth meeting on October

28. And, the Union also apprised the Employer that it ''rejects Management's offer'' with respect to the technical assistant operator combination. At the following meeting on November 3, management essentially rejected the Union's site service operator counterproposal. The Union faulted management for not ''changing'' from its ''original position'' on its proposal and not ''properly bargaining.'' And, with respect to the Employer's technical assistant operator proposal, management warned that ''absent additional new input from the Union it plans to decide the appropriate course of action . . . .'' The Union responded that it ''expects Management to maintain the production and maintenance jobs and the clerical, technical and office jobs and not to combine those people without proper bargaining . . . .''

Thereafter, at the tenth meeting on December 11, the Union again made another or modified counterproposal pertaining to the Employer's site service operator proposal. The parties then discussed the Employer's technical assistant proposal. The Union requested ''information'' and ''clarification.'' The Union explained that ''it wants to be able to help set the flexibility management needs with less hassle and also not to do away with the testing and plant seniority.'' The Union noted that ''if Management is receptive the Union could caucus and develop a proposal for Management . . . the Union's intent is that it does not want to upset the whole site on managing the research technical assistant problems.'' Management said that ''it would like to hear what the Union has to say'' and would ''take a serious look at any proposal given by the Union.'' Management also ''agreed to consider'' the Union's modified counterproposal pertaining to site service operators although ''interviews needed to start January 4 so this proposal needed to be resolved this month.'' In addition, management said that ''any proposal'' from the Union pertaining to the technical assistant proposal ''would be seriously considered'' although here too ''this needed to be resolved by early January . . . .''

Management responded to the Union's site service operator counterproposal or modified counterproposal at the eleventh meeting on December 15 rejecting in part key union proposals. And, as the minutes of this meeting show:

> Management said it would start hiring about 65 full-service employees and that would get up to some 300 later. There is a high number of group threes and fours. Only eight jobs out of 300 group fives are being impacted. Management said that the Union had previously counterproposed that management keep group five jobs for group five. Management is not ready to respond to the Union's counterproposal today on this issue.
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> . . . .
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> Management said the Union had made a counterproposal that the following tasks that are now group three tasks remain group three tasks for one year . . . . Management is still considering and will respond later. . . . The Union said again it is counterproposing for Management to leave the following tasks as group three for one year . . . . Management said it understands the Union's counterproposal. This is being considered and will respond to the Union later.

Management ''suggested'' that the ''remainder of the issues on this proposal'' ''be resolved in the meeting scheduled for 12/21/87.'' The Union ''said it will give Management its position at the next meeting on 12/21/87.''

The parties next discussed the Employer's technical assistant proposal. ''Management reviewed the need to improve effectiveness through either the combination of jobs or some other creative approach in which the operators and technical assistants could be fully interchangeable to accomplish whatever tasks needed to be done without the incumbent barriers''; and

> Management asked the Union when it would be ready to respond. The Union said it would respond on 12/21/87.

The Union made another or further modified counterproposal at the 12th meeting on December 21. The Union stated at this session that it would respond to both the Employer's proposal to hire site service operators and also to its proposal concerning the technical assistant operators as follows:

> The Union said it is willing to accept Management's hiring of full service employees proposal as well as the research technical assistant/operator proposal with the understanding that Management will fill the technical assistant jobs using the existing job transfer request system [of the Rules of Job Progression]. The Union requested Management to guarantee that excess group five employees would not be rolled back. In return, as a package deal, the Union wants all limited service employees on the location to be made full service employees with the test being waived. The Union said it agrees to hire full service employees with a hire rate for site service operators of $6.25 an hour with the rate going to the group two rate after 90 days. The group two rate is $10.59 an hour. . . . Also, the group five tasks that Management had proposed to be turned over to site service operators will be retained with the group five operators.
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> The Union said there are now 24 incumbent research operators. The Union requested again that the research group five operators retain their group five rate after Management implements the technical assistant/operator proposal. The Union said that those operators in research who did not pass the technical assistant test or did not want to go to technical assistant jobs would remain in the area and retain their group five jobs. If they are moved out . . . they will still retain their group five rate even if excess.

As Chief Union Negotiator Pearce testified, ''we felt that maybe by putting these two proposals together and compromising one for the other, giving some, taking some, that we could resolve both of them.'' Pearce explained:

> We had two proposals that we were working on along with other proposals . . . and we felt the only way we could agree with both was to try to put them together. . . . Our proposal was to tie the two proposals together . . . . [W]e were willing to give Management the group five jobs that they wanted to put into the clerical, technical, office [unit] . . . we were willing to give Management the flexibility to move the people from

> area to area without using the Rules of Job Progression, the flexibility to change shift schedules without using the Rules of Job Progression, give up some of the group threes, group four and group five jobs or job assignments . . . we even were willing to drop the hiring rate from $6.95 an hour to $6.25 an hour . . . .

At the 13th meeting on December 29, management adamantly refused to consider the Union's proposed ''horse trade'' or ''compromise'' involving its site service operator and technical assistant proposals, stating that ''Management did not bargain that way''; ''it is not going to horse trade with the Union''; and ''it will communicate to the plant that it will start interviewing next week.'' Chief Union Negotiator Pearce recalled:

> Management said they did not horse trade, they did not want to deal with the issues together. They only wanted to bargain them separately. They were separate issues. . . . [W]e were at the position where the only way we could get anywhere further was to try to resolve both of them together by give and take on both issues. Management was not willing to do that.

And, Chief Management Negotiator Davis acknowledged:

> Our view has been always, and we have said it many times, many times, that if it's justified, it's justified; if it isn't justified, it isn't justified . . . [a]nd we are not going to try to take one item and to beat someone over the head for another one . . . that's our history . . . . I just want to make sure that they understand that we haven't got in the business of saying, okay, if you do this I'll do this and this because it clouds the issues . . . .

Davis later asserted that ''I wouldn't have agreed to both of these anyway''; however, we will never know that because he refused to even consider this proposed ''horse trade'' or ''compromise.'' The record makes clear that management thereafter implemented its site service proposal as modified over the Union's objection.

Management's adamant and unyielding refusal to even consider the Union's proposed ''horse trade'' or ''compromise'' at this critical juncture in the collective-bargaining process demonstrated that it had approached the bargaining table with a fixed determination to implement its site service proposal regardless of the status of negotiations. As Company Chief Negotiator Davis had explained earlier, when asked with respect to his asserted delineation between so-called ''contract issues'' and ''non-contract issues,'' ''what difference would it make . . . you would still have to bargain about these same subject matters . . . .'' Davis responded: ''Yes sir, but . . . if you have a contract bar you cannot implement it . . . impasse it and implement it,'' Management had even announced its intended and scheduled implementation of this proposal long before any meaningful bargaining had occurred suddenly claiming ''urgency'' after months of internal study. It is clear that management, by this course of conduct, had thus unreasonably reduced the flexibility of collective bargaining and narrowed the range of possible compromises by rigidly and unreasonably fragmenting negotiations.

In short, the Company's explanation of its understanding of collective bargaining, that is,

> Management . . . did not horse trade, they did not want to deal with the issues together. They only wanted to bargain them separately. They were separate issues. [Management was] not going to try to take one item and to beat someone over the head for another one . . . . [Management] just want[ed] to make sure that they [the Union] understand that we haven't got in the business of saying, okay, if you do this I'll do this and this because it clouds the issues . . . .

is plainly at odds with the required give and take of the collective-bargaining process in a serious attempt to resolve differences and reach a common ground. Further, I reject the Employer's claim of ''urgency'' as justification for its course of conduct here. This record does not demonstrate any ''urgency'' which would justify a refusal to even consider the Union's proposed ''horse trade'' or ''compromise.'' Respondent has therefore violated Section 8(a)(5) and (1) of the Act as alleged.[10]

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce and the Union is a labor organization as alleged.

2. Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to bargain in good faith with the Union, the exclusive bargaining agent of its employees in the following appropriate units, by unilaterally implementing on or about January 13, 1988, its proposal to hire full service employees in the position of site service operators without having reached a valid impasse in bargaining with the Union. The appropriate bargaining units are:

> All production, maintenance, service and plant technical hourly wage roll employees employed by Respondent at its Spruance Plant of the textile fibers department, located in Ampthill, Virginia, but excluding all employees classified as instructors, instructresses, security officers, limited service employees, employees when working as relief supervisors and supervisors-in-training, and supervisors.
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> . . . .
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> All non-exempt monthly salary roll clerical, technical and office employees employed by Respondent at its Spruance Plant of the textile fibers department, located in Ampthill, Virginia, but excluding all hourly wage roll production and maintenance employees, nurses, security officers, executive, plant, employment and planning secretaries; salary, roll, employment personnel, and contract administration clerks; systems technicians,

[10] Counsel for the General Counsel's amended 8(d) allegation (see fn. 1, supra) remains for consideration. Counsel for the General Counsel explained (Tr. 321–326) that this amendment is an alternative or hypothetical allegation contingent in effect upon a finding that Respondent Employer had the ''right'' here ''to reopen wages separately from the contract'' and this ''right'' assertedly privileged in some manner the otherwise allegedly unlawful unilateral implementation. Counsel for the General Counsel would claim, if such a finding were made, that appropriate notice of the dispute was not in fact given under Sec. 8(d) of the Act. In view of the findings and conclusions made here, it is unnecessary to reach this hypothetical or alternative allegation. In any event, I would dismiss this allegation. The notice given to the Federal Mediation and Conciliation Service was ample and adequate here.

receptionist/telephone operators, employees on the no-service roll, student operators, student engineers, co-op students; and all supervisors.

3. Respondent has not committed other unfair labor practices as alleged.

4. The unfair labor practices found above affect commerce as alleged.

REMEDY

To remedy the unfair labor practices found above, Respondent Employer will be directed to cease and desist from engaging in such unlawful conduct or like and related conduct and to post the notice attached hereto. Affirmatively, Respondent Employer will be directed to on request bargain in good faith with the Union and embody any understanding reached in a signed agreement; to rescind its unilateral implementation of its site service proposal found unlawful herein; and to make whole its unit employees who have incurred losses of wages and other benefits because of Respondent's unlawful unilateral changes in their terms and conditions of employment, as found above. Such sums shall be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). And, Respondent Employer will be directed to preserve and on request make available to the Board or its agents for examination and copying all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary or useful in determining compliance with this Decision and Order.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[11]

ORDER

The Respondent, E. I. Dupont de Nemours & Company, Ampthill, Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with the Union, Ampthill Rayon Workers, Inc., the exclusive bargaining agent of its employees in the following appropriate units, by unilaterally implementing on or about January 13, 1988, its proposal to hire full-service employees in the position of site service operators without having reached a valid impasse in bargaining with the Union. The appropriate bargaining units are:

> All production, maintenance, service and plant technical hourly wage roll employees employed by Respondent at its Spruance Plant of the textile fibers department, located in Ampthill, Virginia, but excluding all employees classified as instructors, instructresses, security officers, limited service employees, employees when working as relief supervisors and supervisors-in-training, and supervisors.
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> . . . .
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> All non-exempt monthly salary roll clerical, technical and office employees employed by Respondent at its Spruance Plant of the textile fibers department, located in Ampthill, Virginia, but excluding all hourly wage roll production and maintenance employees, nurses, security officers, executive, plant, employment and planning secretaries; salary, roll, employment personnel, and contract administration clerks; systems technicians, receptionist/telephone operators, employees on the no-service roll, student operators, student engineers, co-op students; and all supervisors.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed to them under Section 7 of the National Labor Relations Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request bargain in good faith with the Union as the exclusive bargaining agent of the above appropriate units of its employees with respect to their wages, hours, and other terms and conditions of employment and embody any understanding reached in a signed agreement.

(b) Rescind the unilateral changes in wages, hours, and other terms and conditions of employment found unlawful in this decision and take whole the unit employees for losses of wages and other benefits because of Respondent's unlawful unilateral changes in their terms and conditions of employment, with interest, as provided in this decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary or useful in determining compliance with this Decision and Order.

(d) Post at its Spruance Plant facilities in Ampthill, Virginia, copies of the attached notice marked ''Appendix.''[12] Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[11] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[12] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain in good faith with the Union, Ampthill Rayon Workers, Inc., the exclusive bargaining agent of our employees in the following appropriate units, by unilaterally implementing on or about January 13, 1988, our proposal to hire full service employees in the position of site service operators without having reached a valid impasse in bargaining with the Union. The appropriate bargaining units are:

> All production, maintenance, service and plant technical hourly wage roll employees employed by Respondent at its Spruance Plant of the textile fibers department, located in Ampthill, Virginia, but excluding all employees classified as instructors, instructresses, security officers, limited service employees, employees when working as relief supervisors and supervisors-in-training, and supervisors.
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> . . . .
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> All non-exempt monthly salary roll clerical, technical and office employees employed by Respondent at its Spruance Plant of the textile fibers department, located in Ampthill, Virginia, but excluding all hourly wage roll production and maintenance employees, nurses, security officers, executive, plant, employment and planning secretaries; salary, roll, employment personnel, and contract administration clerks; systems technicians, receptionist/telephone operators, employees on the no-service roll, student operators, student engineers, co-op students; and all supervisors.

WE WILL NOT in any like or related manner interfere with, restrain or coerce our employees in the exercise of the rights guaranteed to them under Section 7 of the National Labor Relations Act.

WE WILL, on request, bargain in good faith with the Union as the exclusive bargaining agent of the above appropriate units of our employees with respect to their wages, hours and other terms and conditions of employment and embody any understanding reached in a signed agreement.

WE WILL rescind the unilateral changes in wages, hours, and other terms and conditions of employment found unlawful in the Board's decision and make whole the unit employees for losses of wages and other benefits because of our unlawful unilateral changes in their wages, hours, and other terms and conditions of employment, with interest as provided in this decision.

E. I. DUPONT DE NEMOURS & COMPANY